



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



370473

AUG 10 2010

REPLY TO THE ATTENTION OF

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Bautsch-Gray Mine Site
Jo Daviess County, Illinois

Dear Sir or Madam:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 or Len Zintak, On-Scene Coordinator, at (312) 886-4246.

Sincerely yours,

Richard C. Karl, Director
Superfund Division

Enclosure

cc: Mr. Gary King
Illinois Environmental Protection Agency
Division of Land Pollution Control

RESPONDENTS TO UNILATERAL ADMINISTRATIVE ORDER

West Galena Development, Inc.

Chains & Links, Inc.

Vincent A. Varsek Trust

c/o: Law Offices of Carey S. Rosemarin, P.C.

500 Skokie Boulevard, Suite 510

Northbrook, IL 60062

Kenneth L. Johnston Trust

c/o: Mr. Bob Callero

7800 Milwaukee

Niles, Illinois 60714

bcc: Docket Analyst, ORC (C-14J)
Tom Turner, ORC (C-14J)
Len Zintak, (SE-5J)
John Maritote, EESS (SE-5J)
Carol Ropski, ESS#1 (SE-5J)
Fushi Cai, ESS#1 (SE-5J)
Richard Hackley, PAAS (MF-10J)
Joseph Poetter, U.S. EPA, MS-002, 26 W. Martin Luther King Drive, Cincinnati, OH 45268

Michael T. Chezik
Regional Environmental Officer
Office of Environmental Policy and Compliance
Philadelphia Region
Custom House, Room 244
200 Chestnut Street
Philadelphia, PA 19106

Records Center (SMR-7J)

IN THE MATTER OF:)	Docket No	V-W-10-C-954
)		
Bautsch-Gray Mine Site)	ADMINISTRATIVE ORDER	
S. Blackjack Road)	PURSUANT TO SECTION 106(a)	
Jo Daviess County, Illinois)	OF THE COMPREHENSIVE	
)	ENVIRONMENTAL RESPONSE,	
Respondents:)	COMPENSATION, AND	
)	LIABILITY ACT OF 1980,	
West Galena Development, Inc.)	AS AMENDED, 42 U.S.C.	
Chains & Links, Inc.)	§9606(a)	
Vincent A. Varsek Trust)		
Kenneth L. Johnston Trust)		
)		

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

EPA has notified the State of Illinois of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order.

Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The Site is located in Jo Daviess County approximately 4 miles south of Galena, Illinois adjacent to South Blackjack Road. The approximately 100-acre Site is composed of the surface-area remnants of a former zinc and lead mining operation. The Site is located in a rural agricultural and residential area and is bordered to the north, south, and east by residential properties and agricultural land, and to the west by Blackjack Road, further residential properties, and wooded areas. The Site is also within approximately 0.5 miles of Smallpox Creek, and approximately 1.5 miles of the shoreline of the Mississippi River. See Site Map at Attachment A.

2. The Bautsch-Gray Mine site originated as a lead and zinc mining operation sometime during the 1850s. Throughout the history of the mine, several small-scale companies have used the area for mining and milling operations. Between 1964 and 1974, the Eagle-Picher Company and Eagle-Picher Industries, Inc. ("EaglePicher"), purchased or leased property and or mineral rights from different landowners for their own mining operations. EaglePicher engaged in active mining operations during this time period and caused mine tailings containing hazardous substances to be disposed of on the Site. Mining operations on the Site ceased in approximately 1975. Currently, four separate entities own the properties that comprise the Bautsch-Gray Mine site. Respondents West Galena Development, Inc. and Chains and Links, Inc. have, since 1997, each respectively owned a ½ interest in at least an approximately 18.5-acre portion of the Site that is identified by the Jo Daviess County Assessor's office as #43-14-000-026-10. Respondent Vincent A. Varsek Trust has, since 1996, owned an approximately 32.85 acre portion of the Site that is identified by the Jo Daviess County Assessor's office as #43-14-000-068-30. The Kenneth L. Johnston Trust is the owner of an approximately 18-acre portion of the Site that is identified by the Jo Daviess County Assessor's office as #43-14-000-043-30.

3. The zinc production operations involved the crushing and grinding of mined rock to standard sizes and then separating out the ore. This action left behind waste-piles of leftover rock called tailings. The elevation of the main waste-pile on the Bautsch-Gray Mine site has been estimated to be approximately 50-90 feet above the surrounding ground surface. Since mining operations have ceased, the mine tailings have continued to erode and migrate toward the residential properties, wetlands, and fisheries near the Mississippi River. The tailings piles have no vegetative covering and, therefore, are

subject to erosion, disturbance and displacement when weather or other natural or human activities affect them.

4. The Illinois Environmental Protection Agency (IEPA) conducted CERCLA site assessment activities between 1999 and 2001, respectively. During these assessments, it was determined that the waste-pile contained elevated levels of zinc, lead, arsenic, and other heavy metals. It was also determined that surrounding creeks and draining ditches were impacted from material that eroded from the large waste-pile on the Bautsch-Gray Mine site. One residential groundwater well was determined to have been impacted by the waste-pile contaminants on-site.

5. During an August 2009 rain event, mine tailings were flushed from the main waste-pile on the Bautsch-Gray Mine site across Blackjack Road and onto residential properties at 746 and 798 Blackjack Road, respectively. The residential property northwest of the Site is located less than 200 feet from the mine tailings pile and future rain events could cause more tailings to be deposited on the property. IEPA and EPA are also concerned about present accessibility of the original tailings waste-pile, which has been observed to be accessed by parties using the material as free or low cost road fill and, thus, further spreading the release of contamination.

6. On August 18, 2009, two soil samples of Site tailings were collected by IEPA for laboratory analysis using Toxicity Characteristics Leaching Procedure (TCLP) methods for metals. Both samples exceeded the criteria of 5 milligrams per liter (mg/L) for TCLP lead.

7. On August 24, 2009, the IEPA conducted X-Ray Fluorescence (XRF) screening of Site soil/tailings material from the waste-pile, adjacent road ditches, and the nearby residential areas. The XRF screening results of 36 samples ranged from 69 to 2,160 parts per million (ppm) lead with the majority of results being greater than the EPA Soil Screening level of 400 ppm lead.

8. The August 2009 rain event resulted in approximately 12 inches of mine tailings from the Bautsch-Gray Mine site washing onto Blackjack Road. The Jo Daviess County Highway Department responded with crews to move the material from the road back into the site in order to clear the road and make it passable. According to the Highway Department, this has been a frequent problem during the rainy seasons in previous years. Vehicles that travel on Blackjack Road create dust that originates from mine tailings waste. The airborne material may present a health hazard to local residents and highway workers. On September 9, 2009, IEPA requested EPA assistance.

9. EPA conducted a Site Assessment in October 2009. In a November 2009 preliminary Site Assessment findings memorandum (Memo), EPA determined that the residential properties at 746 S. Blackjack Road and 798 S. Blackjack Road, Jo Daviess County, Illinois had been directly affected by the release of tailings from the Site. The November 2009 Memo identified lead contamination in the residential 746 S. Blackjack Road property well water at 27 micrograms-per-liter (ug/L), and some surface soil lead

contamination above 1,200 ppm. In February 2010, EPA updated the Memo to add concerns about lead contamination in Blackjack Road ditches in the proximity of the Site, as well as arsenic levels in residential soils. EPA findings indicated levels of arsenic present above the 25 ppm recommended residential soil cleanup targets maintained by both EPA and the Agency for Toxic Substances Disease Registry (ATSDR).

10. On March 3, 2010, Respondents West Galena Development, Inc., Chains and Links, Inc., and the Vincent A. Varsek Trust entered into an Administrative Order by Consent (AOC) (Docket Number V-W-10-C-945) with EPA. The AOC required the previously mentioned Respondents to develop and implement a Site Security Plan to restrict access to the mine tailings pile on-Site, and cease any sale of/arrangement/involvement with the removal of tailings from the Site; with the property owner's permission, install temporary fencing and appropriate warning signage to restrict access to lead contaminated surface soil areas on the residential property at 746 S. Blackjack Road; and, with the property owner's permission, install and maintain a whole house water filter (or acceptable clean water well) on the house at 746 S. Blackjack Road. The filtration system or well must reduce lead contamination levels in the water to below 15 ug/L (micrograms per liter). The Respondents completed the work requirements of the March 2010 AOC in July 2010.

11. On July 23-24, 2010, another severe rainstorm occurred at the Site. Further contaminated mine tailings were released from the Site and affected Blackjack Road and adjacent properties. The Respondents addressed the immediate emergency on July 24, 2010.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA determines that:

1. The Bautsch-Gray Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

5. Respondents West Galena Development, Inc., Chains & Links, Inc, Vincent A. Varsek Trust, and Kenneth L. Johnston Trust are the “owners” of portions of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

6. Respondents West Galena Development, Inc., Chains & Links, Inc, Vincent A. Varsek Trust, and Kenneth L. Johnston Trust are the “owners” of portions of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

7. The conditions at the Site, described in the Findings of Fact above, constitute an actual or threatened “release” of a hazardous substance from the facility into the “environment” as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§9601(22) and 9601(8).

8. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (“NCP”), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

Analysis of soil samples collected in surface soils (0 to 4 inches) confirmed the presence of high concentrations of lead above 1,200 ppm, exceeding the EPA Regional Screening Levels for Contaminants of Concern at Superfund Sites and the EPA Soil Screening Levels criteria of 400 ppm; exceeding the Superfund Lead-Contaminated Residential Sites Handbook Tier 1 properties criteria of 1,200 ppm; and exceeding the Superfund Adult Lead Methodology screening value for soil lead at commercial/industrial Sites criteria of 800 ppm. Lead is a “hazardous substance” as defined by Section 101(14) of CERCLA. Arsenic has also been detected in surface soil samples, in amounts in excess of 25 ppm; exceeding the action/target levels for residential soils under EPA and ATSDR recommended guidelines.

The effects of lead exposure are more severe for young children and the developing fetus through exposure to a pregnant woman. The harmful effects of lead include premature births, lower birth weight, decreased mental ability in infants, learning difficulties, and reduced growth in young children. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to

high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. High-level exposure in men can damage the organs responsible for sperm production. Reference: ATSDR. August 2007. Division of Toxicology and Environmental Medicine ToxFAQs. Agency for Toxic Substances and Disease Registry, Division of Toxicology. Atlanta, GA. U.S. Department of Health and Human Services, Public Health Service.

Inhalation of high levels of arsenic can cause sore throat or irritated lungs. Ingesting high levels of inorganic arsenic can result in death. Lower levels of arsenic exposure can cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of "pins and needles" in hands and feet. Ingesting or breathing low levels of arsenic for a long time can cause a darkening of the skin and the appearance of small "corns" or "warts" on the palms, soles, and torso. Several studies have shown that arsenic can increase the risk of lung cancer, skin cancer, bladder cancer, liver cancer, kidney cancer, and prostate cancer. The World Health Organization (WHO), the Department of Health and Human Services (DHHS), and the EPA have determined that inorganic arsenic is a human carcinogen. The effects of arsenic exposure are more severe for young children due to low body weight, and to a developing fetus when a pregnant woman is exposed.

ii) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

Analysis of soil samples collected in surface soils (0 to 4 inches) from the residential property at 746 Blackjack Road confirmed the presence of high levels of lead up to 1,340 ppm, exceeding the EPA Regional Screening Levels for Contaminants of Concern at Superfund Sites and the EPA Soil Screening Levels criteria of 400 ppm; and, exceeding the Superfund Lead-Contaminated Residential Sites Handbook Tier 1 properties criteria of 1,200 ppm. Sensitive populations including children less than 7 years old and pregnant women may become exposed through normal foot traffic, yard work, or play. Also the presence of the contaminant at or near the surface allows for the potential for migration of the contaminant from residential yards via wind, rain or manual dispersion.

Surficial soil sampling also revealed the presence of high levels of arsenic. Because of the above mentioned risk to human health related to arsenic, and the potential for migration of the contaminant at or near the surface of residential yard or garden areas via wind, rain or manual dispersion, the threat must be addressed.

iii) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

This factor is present due to the existence of high levels of lead and/or arsenic in surface soils sampled (0 to 4 inches), including those at the residential properties at 746 S. Blackjack Road and 798 S. Blackjack Road, as well in the road way ditches of Blackjack Road in proximity to the Site. During dry conditions, winds could cause dust particles to further migrate both on and off Site. During precipitation events, surface water runoff is causing significant runoff of contamination from the Site tailings pile to the residential properties and further downstream to the Mississippi River. Due to the previously mentioned potential for adverse weather conditions causing release or threat of release of the Site tailings, and the possibility of high concentrations of lead in residential areas above health standards, as well as direct contact and inhalation threats to public health, welfare or the environment should continued exposure persist, the criteria for a removal action are met.

iv) The availability of other appropriate federal or state response mechanisms to respond to the release;

On September 9, 2009, IEPA requested the assistance of the EPA Emergency Response Branch in assessing and mitigating potential hazards associated with this Site. The State of Illinois (IEPA) has indicated they do not have the resources to conduct the required time-critical removal actions. IEPA is planning to propose the site for inclusion on the NPL.

9. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).
10. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions themselves or retain contractor(s) to implement the removal actions. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 3 business days of EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within 4 business days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

The EPA has designated Leonard Zintak of the Emergency Response Branch #2, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 77 W. Jackson Blvd., Chicago, Illinois 60604-3590 (mail code (SE-5J)), by certified or express mail. Respondents shall also send a copy of all submissions to Tom Turner, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

- a. Develop and implement a Site Health and Safety Plan;
- b. Develop and implement a Site Security Plan;
- c. Develop and implement a Quality Assurance Project Plan (QAPP) for removal sampling activities;

- d. Conduct perimeter air monitoring / sampling for lead and arsenic during on-site work activities to protect workers and nearby populations;
- e. Collect and analyze additional soil and water samples as necessary to determine the extent of off-site contamination;
- f. With the property owner's permission, excavate and remove the contaminated soil and mine tailings with lead concentrations greater than 400 parts per million (ppm) and/or with arsenic concentrations greater than 25 ppm, but not to exceed 2 feet in depth on the affected residential property at 746 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the Site;
- g. Excavate and remove the contaminated soil and mine tailings with lead concentrations greater than 400 ppm and/or with arsenic concentrations greater than 25 ppm in road ditch areas along Blackjack Road north of the Site to Smallpox Creek, and south of the Site in the vicinity of 798 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the Site;
- h. The main tailings pile area on the Site will be graded and contoured to ensure proper storm water retention and drainage, and drainage culvert pipes will be added, enlarged, or repaired, as necessary;
- i. With the property owner's permission, take appropriate remediation measures to reduce or eliminate the migration of contaminated mine tailings onto and from the "horseshoe shaped" tailings deposition area at 798 S. Blackjack Road. Stormwater must be managed to reduce or eliminate contact, to the extent possible, with the contaminated tailings. Options include excavation and removal of the contaminated soil and mine tailings with lead concentrations greater than 400 parts per million (ppm) and/or with arsenic concentrations greater than 25 ppm in the horseshoe-shaped tailings deposition area at 798 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the Site. This task shall be conducted as part of this time-critical removal action, but may be performed after stabilization of the tailings pile in the principal Site area is completed;
- j. Develop and implement a post removal sampling plan to confirm that cleanup levels have been met; and
- k. Backfill excavated residential areas with clean fill and restore to elevations and landscaping equivalent to pre-removal conditions. The horseshoe-shaped Site tailings deposition area at 798 Blackjack Road (above described in subparagraph 'i') shall be properly contoured and stabilized.

3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of notification. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondents shall submit a plan for EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify

EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondents shall submit a monthly written progress report to EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which EPA determines to be necessary. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j),

all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondents to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996.

Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

VIII. REIMBURSEMENT OF COSTS

Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary, or such other summary as certified by EPA, shall serve as the basis for payment.

Respondents shall remit payment for the demanded amount, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

Payment shall be made to EPA electronically by either Electronic Funds Transfer ("EFT") payment via the Automated Clearinghouse (ACH) for U. S. currency, or payment on line at the U. S. Department of Treasury website (www.pay.gov) in accordance with current procedures that EPA Region 5 will provide Respondents*, and

*Currently, the FedWire Message and payment should be sent to:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

The Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

Payments via ACH are to

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, EPA Region 5, and the Site/Spill ID Number B5TS and, if any, the EPA docket number for this action. When the Response Costs identified in the above paragraph are less than \$10,000, payment may, in lieu of the described electronic methods, be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, and Site/Spill ID Number B5TS, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs – Bausch-Gray Mine Site" and shall reference the payer(s)' name(s) and address(es), the EPA site identification number (B5TS), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. §3717 and 4 CFR §102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

Payment via www.pay.gov should be by a form found by entry of "sfo 1.1" in a search entry box available on the website.

X. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondents may request that EPA provide a Notice of Completion of the work required by this Order. If EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record

retention), EPA will provide written notice to the Respondent(s). If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Tom Turner, Associate Regional Counsel, at (312) 886-6613. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

Bautsch-Gray Mine Site
Jo Daviess County, Illinois

XVI. EFFECTIVE DATE

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY: Richard C. Karl
Richard C. Karl, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

DATE: 8-10-10

ATTACHMENT B

LIABILITY FILE INDEX

1. 2009 Title Search Report for Jo Daviess County Parcel # 43-14-000-026-10
(Owners: West Galena Development, Inc. and Chains and Links, Inc.)
2. 2009 Title Search Report for Jo Daviess County Parcel #43-14-000-068-30
(Owner: Vincent A. Varsek Trust)
3. November 24, 2009 USEPA Confirmation of Verbal General Notice of Liability
Letters to: West Galena Development, Inc. (c/o: Ms. Lois Knautz-Wienen), Chains and Links, Inc., and Vincent A. Varsek Trust.
4. March 9, 2010 USEPA Updated and Final Site Assessment Report

ATTACHMENT A

Image Source:
ESRI Imagery World 2D



= Approximate Locations of Anticipated Temporary Fencing



Legend

Parcel Boundaries
0 500
Feet



Prepared for:
U.S. EPA REGION V

Contract No.: EP-S5-06-04
TDD: S05-0001-0909-011
DCN: 767-2A-AFJA



Prepared By:
WESTON
SOLUTIONS, INC

750 E. Bunker Court
Suite 500
Vernon Hills, Illinois 60061

Site Features Map
Bautsch-Gray Mine Site
Jo Daviess County, Illinois

U.S. ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ACTION



ADMINISTRATIVE RECORD
FOR
BAUTSCH GRAY MINE SITE
JO DAVIESS COUNTY, ILLINOIS

ORIGINAL
(SDMS ID: 363347)
MAY 17, 2010

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	09/08/09	Everetts, B., Illinois EPA	Borries, S., U.S. EPA	Letter re: Illinois EPA Requests U.S. EPA Assistance with Possible Removal Action at the Bautsch Gray Mine Site (SDMS ID: 363348)	7
2	03/08/10	Everetts, B., Illinois EPA	Zintak, L., U.S. EPA	Letter re: Illinois EPA Identifies ARARS for the Bautsch Gray Mine Site (SDMS ID: 363349)	3
3	03/09/10	Weston Solutions, Inc.	U.S. EPA	Site Assessment Report for the Bautsch Gray Mine Site (SDMS ID: 348222)	168
4	05/17/10	Zintak, L., U.S. EPA	Gebien, C., U.S. EPA	Action Memorandum: Request to Conduct a Time-Critical Removal Action and Further Site Assessment at the Bautsch Gray Mine Site (PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED/SDMS ID: 363344)	20

EPA Region 5 Records Ctr.



363347